

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Revision of the Commission's Rules To)	CC Docket No. 94-102
Ensure Compatibility with Enhanced)	
911 Emergency Calling Systems)	

**ALPINE PCS, INC. AND RFB CELLULAR, INC.
PETITION FOR LIMITED WAIVER**

Alpine PCS, Inc. ("Alpine") and RFB Cellular, Inc. ("RFB") hereby respectfully request a limited waiver of the June 30, 2002 deadline for digital wireless service providers to be capable of transmitting 911 calls made using TTY devices.¹ Specifically, Alpine and RFB request an extension of the deadline for one year, or until June 30, 2003.

Alpine is a small non-wireline PCS carrier that (together with its affiliated entities) holds PCS licenses in Santa Barbara (BTA 406), San Luis Obispo (BTA 405), Fresno (BTA 157), Bakersfield (BTA 028) and Salinas-Monterey (BTA 397). In addition to the PCS markets in California, Alpine has seven PCS markets located in the upper and lower peninsulas of Northern Michigan. These seven markets include: BTA 11/Alpena; BTA 132/Escanaba; BTA 345/Petoskey; BTA 390/Saginaw-Bay City; BTA 409/Sault Ste. Marie; BTA 446/Traverse City, and BTA 307C1/Mt. Pleasant. Alpine also holds the PCS license for Hyannis, Massachusetts (BTA 201).²

¹ See Note to paragraph (c) of 47 C.F.R. § 29.18.

² Exhibit 1 is a table that lists the Alpine and RFB affiliates and the licenses they hold.

RFB is a small non-wireline cellular carrier serving two rural cellular markets in northern Michigan (Michigan 2 [“MI-2”] and Michigan 4 [“MI-4”] Rural Service Areas). MI-2 encompasses six counties located in Michigan’s Upper Peninsula: Alger, Delta, Schoolcraft, Luce, Mackinac, and Chippewa. MI-4 encompasses eight counties in northeast Michigan: Alpena, Alcona, Oscoda, Crawford, Ostego, Montmorency, Presque Isle and Cheboygan.

Alpine and RFB are affiliates and have jointly filed quarterly reports on implementation of the TTY access requirement. As noted in those quarterly reports, Alpine has an ongoing commercial dispute with Lucent Technologies, which is the equipment vendor for Alpine’s California systems. Alpine initially selected Lucent primarily on the basis of Lucent’s agreement that it would finance certain of Alpine’s equipment purchases. Lucent reneged on its financing agreement, and the parties have been unable to resolve the ensuing business and financial disagreements. As a result of these disagreements, Lucent has been unwilling to provide hardware or software to Alpine, including the upgrades required for transmission of calls made from TTY devices. Lucent also has frozen all technical and customer support to Alpine. Lucent refuses to provide these services even when offered cash payment on a going forward basis.

Alpine has been in discussions with Lucent for over a year now in an effort to resolve the dispute but has seen little progress. The most recent meeting with Lucent took place on May 22, 2002, and did not result in any resolution. At this meeting, Lucent again refused to provide Alpine with the hardware and software upgrades it will need to comply with the June 30, 2002 deadline. Alpine is dependent on Lucent for needed

upgrades and requests a one-year waiver of the deadline to allow it to continue its attempts to resolve this dispute and obtain the necessary upgrades from Lucent.

Alpine's Michigan markets and its Hyannis market share a switch with RFB's two Michigan cellular markets. The manufacturer of that switch is Motorola. Although Alpine and RFB had earlier anticipated that they probably would be able to meet the June 30, 2002 deadline with respect to these markets, they recently have concluded that they will be unable to do so because of progressively worsening financial difficulties. Alpine and RFB have been diligently preparing their Michigan and Hyannis networks to be able to meet the CALEA, E911, TTY and number pooling/portability mandates. In the past six months, they have installed Motorola's IS-41 capability (at a cost exceeding \$1.6 million) to support these mandates. However, they still will need additional hardware and software at an estimated cost of more than \$4 million in order to comply with the FCC's requirements.

Alpine and RFB have been adversely affected by the recent economic downturn and resulting collapse of financial markets. In addition, they have experienced a drastic decline in roaming revenues. Because of their current financial situation and the high cost of the equipment required to meet the FCC's mandates, Alpine and RFB do not have sufficient financial resources to acquire the additional upgrades in time to meet the June 30, 2002 deadline. They are requesting a one-year waiver of the deadline to allow them to continue to purchase upgrades as they are able.

The Commission may grant a waiver if the requesting party demonstrates that the underlying purpose of the rule would not be served by application in the case at hand

and that a grant of the waiver would be in the public interest.³ The Commission also may waive its rules “if good cause therefore is shown.”⁴ In the context of its E911 requirements, the Commission has recognized that “technology-related issues” or “exceptional circumstances” may mean that carriers are unable to meet the deadlines in its rules and may satisfy the good cause standard for grant of a waiver.⁵

Alpine and RFB have demonstrated good cause for grant of the requested waiver. Alpine’s ongoing dispute with Lucent and the current financial situation of both Alpine and RFB constitute exceptional circumstances that justify a limited waiver. Alpine and RFB intend to continue to use their best efforts to come into compliance with the TTY requirements as expeditiously as possible. They also will continue to file quarterly reports on their progress in implementing these requirements.

In addition, the underlying purpose of the rule would not be served by enforcement in this case. To the best of their knowledge, neither company has any customers using a TTY device with a CDMA phone, and no customer has requested such capability. Thus, it would be in the public interest to grant the requested waiver in light of the exceptional circumstances described herein.

³ See 47 C.F.R. § 1.925.

⁴ See 47 C.F.R. § 1.3.

⁵ See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Fourth Memorandum Opinion and Order*, 15 FCC Rcd 17442 (2000) at ¶ 43.

For the reasons stated herein, Alpine and RFB submit that good cause exists for issuance of a limited waiver, and such a waiver is consistent with the underlying purpose of the Commission's E911 rule and with the public interest.

Respectfully submitted,

ALPINE PCS, INC. and RFB CELLULAR, INC.

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